

AUCTION PURCHASE AND SALE CONTRACT

**THIS IS A LEGALLY BINDING CONTRACT.
YOU ARE ADVISED TO CONSULT AN ATTORNEY BEFORE SIGNING.**

CONTRACT OF SALE made as of the ____ day of _____, 20__ between _____, residing/doing business at _____, "Seller", who agrees to sell and _____, residing/doing business at _____, "Purchaser", who agrees to buy the Property located at _____, in the Town/City/Village of _____, County of _____, State of _____, including all buildings and improvements thereon ("Property").

SALE PRICE \$ _____ (_____ Dollars)

BUYER'S PREMIUM \$ _____ (_____ Dollars)

TOTAL PURCHASE PRICE: \$ _____ (_____ Dollars)

The Purchaser shall pay the purchase price as follows:

- A. \$_____ Earnest Money Deposit with this Contract.
- B. \$_____ Buyer's Premium paid at the time of Auction.
- C. \$_____ Balance Due at Closing in certified funds.

1. **AUCTION SALE.** The Parties acknowledge, understand, and agree that the Property is sold at auction "AS IS, WHERE IS, WITH ALL FAULTS AND LIMITATIONS" without warranty or guarantee of any kind, except as provided for in this Agreement as it relates to insurable and marketable title. **This Contract is not contingent upon any financing or inspection contingency.**
2. **PURCHASER'S INSPECTION OF PROPERTY AND PROPERTY CONDITION.** Prior to the auction and/or entering into this Contract, the Purchaser has inspected, or had the opportunity to inspect, the Property, including the structural premises, contents, and title, and is thoroughly acquainted with their condition, and further has conducted, or had the opportunity to conduct, Purchaser's own due diligence and investigations. If Purchaser has not so inspected or completed his/her due diligence, (s)he hereby certifies that (s)he has had the opportunity to do so and has willfully waived such right of inspection and due diligence. The Purchaser agrees to purchase the Property "AS IS, WHERE IS, WITH ALL FAULTS AND LIMITATIONS" with said fixtures and personal property, as applicable, in the present condition subject to reasonable use, wear, tear, and natural deterioration between now and Closing. The Purchaser agrees that neither the Seller nor Seller's agents, servants, officers or employees or the Seller's broker, have made any representations, warranties or statements of fact concerning the Property. Purchaser has received (or, to the extent not received, Purchaser irrevocably waives) all disclosure documents required to be provided by or on behalf of Seller or Seller's representatives. Reports furnished by or on behalf of Seller shall be for informational purposes only and are not made part of this Contract unless required under applicable law.
3. **MARKETABLE AND INSURABLE TITLE CONTINGENCY.** For a period of 30 calendar days commencing upon the last date signed below, *time being of the essence*, this Contract is contingent upon and subject to the Purchaser's examination of title and Seller's ability to deliver marketable and insurable title. If the Purchaser elects to examine title, the 40-year abstract of title, tax search, update of title search and any continuations thereof, survey and/or a fee title insurance policy, shall be obtained at the expense of Purchaser and provided to the Seller within said 30 calendar days hereof. The Seller shall not be required to bring any action or proceeding or otherwise incur any expense to render the title to the Property marketable or insurable. If the Purchaser gives notice within the 30 day

Purchaser's Initials: _____ Seller's Initials: _____

calendar deadline set forth herein that title is unmarketable or uninsurable, the Seller may, at his or her sole option, cancel this Contract or remove said defects. If the Seller does not elect to cancel the Contract on the basis of uninsurable or unmarketable title or otherwise cure said defects, the Purchaser may accept such title as the Seller may be able to convey or cancel this Contract. If the Purchaser declares title unmarketable or insurable and either the Purchaser or Seller elects to cancel the Contract within the 30 calendar day deadline set forth herein, the Earnest Money Deposit and Buyer's Premium shall be refunded in full to the Purchaser without any further recourse by either Party.

4. **CLOSING DATE AND PLACE.** Closing will take place at the office of Seller's attorney or by mail on or before _____ calendar days commencing upon the last date signed below, ***time being of the essence as to the Purchaser ONLY***. The Seller is not required to send any notice to the Purchaser. If the Purchaser neglects or otherwise fails to close in accordance with the terms and conditions of this Contract, the Earnest Money Deposit and buyer's premium shall be forfeited, unless the Seller shall give notice of an extension of the Closing Date. In the sole and absolute discretion of the Seller, the Closing Date may be extended without limitation.
5. **CLOSING DELIVERIES (BY MAIL).** (A) *Seller's Deliveries.* Seller shall deliver the following to Purchaser's attorneys, in escrow: (i) Bargain and Sale Deed executed by Seller and acknowledged, together with an executed TP-584, RP-5217, and, where applicable, IT-2663. Documents may only be released from escrow upon written confirmation from the Seller's attorneys, which will be provided upon receipt of closing proceeds. (B) *Purchaser's Deliveries.* On or before the law date Closing, Purchaser shall deliver to the Seller's attorneys a Statement of Sale, together with an amount in certified and immediately available "good funds" equal to the Purchase Price less the Earnest Money Deposit. Within thirty (30) days following the Closing, the Purchaser shall deliver to Seller's attorneys: (i) confirmation and verification of payment of the FIRPTA withholding tax; and (ii) confirmation and verification of property conveyance recording information.
6. **APPORTIONMENTS.** The following are to be apportioned as of midnight of the day before the day of Closing and are assumed to be paid and current for the benefit of the Seller unless otherwise verified by the Purchaser, as agreed to by the Seller's counsel: (a) Taxes, user fees, water charges and sewer rents, if any, on the basis of the fiscal period for which assessed; (b) Fuel, if applicable, to be adjusted at the market price for fuel as of the date of Closing; c) Rents and security deposits. If Closing shall occur before a new tax rate is fixed, the apportionment of taxes shall be upon the basis of the old tax rate for the preceding period applied to the latest assessed valuation. Notwithstanding any local custom and practice to the contrary, it shall be the Purchaser's obligation to obtain and verify information relative to taxes, user fees, water charges, sewer rents, and the like.
7. **ALLOWANCE FOR CLOSING EXPENSES, COUNTY CLERK FEES, TAX WITHHOLDING (FIRPTA) UNPAID TAXES, JUDGEMENTS AND/OR OTHER ENCUMBRANCES.** Notwithstanding any local custom and practice to the contrary, it shall be the Purchaser's obligation to obtain and verify information relative to taxes, user fees, water charges, sewer rents, and the like. In accordance with Paragraph 5 of this Agreement, the Purchaser shall deliver to Seller a Statement of Sale setting forth all requested credits, with supporting documentation verification. Seller has the option to credit the Purchaser as an adjustment of the purchase price with the amount of any Closing expenses, County Clerk fees, unpaid taxes, assessments, water charges and sewer rents, together with any interest and penalties thereon to date of Closing, or any other lien against the Property that the Seller is obligated to pay and discharge at Closing. The Seller shall not be obligated to disburse Closing proceeds or pay any liens against the Property, other than by adjustment to the purchase price to the credit of the Purchaser. If applicable, the Seller shall give to Purchaser a credit an amount equal to the FIRPTA tax (15% of purchase price) and it shall be the Purchaser's responsibility to submit a FIPRTA payment with form 8288 to the Internal Revenue Service. At the time of Closing, the Purchaser shall have the option to pay for, or take the Property subject to, any and all outstanding unpaid taxes,

Purchaser's Initials: _____ Seller's Initials: _____

judgments, and/or other liens and encumbrances.

8. REAL ESTATE BROKER, BUYER'S PREMIUM AND COOPERATING BROKER COMPENSATION.

(A) *REAL ESTATE BROKER*. The Purchaser and Seller agree that _____ and _____ brought about the sale and Seller agrees to pay the brokerage commission as set forth in the listing agreement and Purchaser agrees to pay brokers' commission as set forth in the buyer's broker agreement, if applicable. (B) *BUYER'S PREMIUM*. The Purchaser and Seller agree that the Buyer's Premium paid by Purchaser at time of auction is not a part of the Earnest Money Deposit or a credit towards commission. (C) *COOPERATING BROKER COMPENSATION*. The Cooperating Broker shall be paid ____ % of the sale price or \$ _____ within ten (10) business days of closing. The amount paid shall be credited to the Purchaser as part of the sale price and to the Seller as part of the commission due the listing broker. The Cooperating Broker agrees to apply this amount against its commission under any agency agreement with Purchaser. Nothing herein shall be deemed to have altered the agency relationships disclosed.

9. PROPERTY SOLD "AS IS, WHERE IS, WITH ALL FAULTS AND LIMITATIONS". Purchaser is acquiring the

Property "AS IS, WHERE IS, WITH ALL FAULTS AND LIMITATIONS" with respect to the physical attributes of the Property in its present state and condition, with all defects and faults, whether known or unknown, presently existing or that may hereafter arise including, without limitation: (a) The value, any appraised value, nature, quality or condition of the Property, including, without limitation, the water, soil and geology; (b) The income to be derived from the Property; (c) The compliance of or by the Property or its operation with any laws, rules, ordinances or regulations of any applicable governmental authority or body; (d) The habitability, marketability, tenantability or fitness for a particular purpose of the Property; (e) All personal property in the Property not belonging to tenants/occupants, if any, or abandoned by the Seller (removal of such personal property shall be the responsibility of the Purchaser). Purchaser shall hold harmless, indemnify and defend Seller and Seller's representatives and agents from any claim arising from or relating to the Property. Upon Closing and transfer of title, Purchaser hereby fully and irrevocably releases Seller and its representatives and agents from any and all claims of any kind whatsoever, whether known or unknown, arising from or relating to the Property. Seller makes no warranties or representations as to whether or not any leases of the Property are in force; whether or not anyone else has a right of possession; whether or not any rent concessions were given to any tenant; whether or not any other contracts were made with the tenants; whether or not any rent charged violates any applicable rent control ordinance, statute, or law; whether or not any other violations of any applicable ordinance, statute or law exist; and whether or not Seller or any tenant is in default under any lease. Notwithstanding the fact that the Property may be occupied, Purchaser acknowledges that the occupancy status shall not provide grounds for Purchaser's failure to consummate the transaction or an excuse for performance required by Purchaser pursuant to this Contract. Purchaser is purchasing the Property "AS IS, WHERE IS, WITH ALL FAULTS AND LIMITATIONS" regardless of occupancy status. Purchaser further acknowledges and understands that Purchaser is solely responsible for the undertaking, processing or completion of any eviction proceedings, including, but not limited to, unlawful detainer or other legal proceedings, including the cost and expense associated therewith in order to secure the right of possession. Purchaser shall not be entitled to any extension of the Closing date as a result of the occupancy status of the Property nor shall Purchaser be entitled to any concessions, discounts, fees or other expenses as a result of the occupancy status of the Property. This section shall survive the close of escrow or the earlier termination of the Contract.

10. LOCAL REQUIREMENTS, BUILDING AND ZONING CODES. Some counties, cities, municipalities and other state subdivisions may require a certificate of occupancy, certificate of use or code compliance certificate and/or inspection required in order to transfer and/or occupy the Property. If such or the like is required for the Property to be transferred to or occupied by Purchaser, Purchaser waives such local requirements to the extent waivable. To the extent any such local requirement is not waivable by Purchaser, Purchaser shall comply with the Local Requirement at Purchaser's sole cost, including, without limitation, the correction of any violations or performance of other work

Purchaser's Initials: _____ Seller's Initials: _____

which may be required in connection therewith. Seller makes no representation as to whether a Local Requirement applies. Purchaser shall indemnify, defend and hold Seller harmless from and against all fines, penalties, costs, expenses, claims and liabilities arising out of or relating to any local requirements. This indemnification shall survive Closing and shall not be deemed to have merged into any of the documents signed or delivered as of Closing. Purchaser should consult the local jurisdiction for information on building and zoning codes or information about transportation beltways and/or planned or anticipated land use within proximity of the Property. Seller makes no representations or warranties regarding compliance or conformity with any building codes, laws, rules or regulations.

11. **SUBJECT TO PROVISIONS.** The Property is to be transferred subject to: (a) Laws and governmental regulations that affect the use and maintenance of the Property; (b) Any state of facts which an accurate survey or inspection of the Property may disclose; (c) Easements, restrictions, and covenants of record and zoning regulations of the municipality in which the Property is located; (d) Assessments of water charges, whether a lien or not a lien upon the Property; (e) Violations and common charges, if any, together with interest and penalties; (f) Ordinances of the city, town, or village; (g) claims or rights of redemption; and (h) any and all tenancies and/or leases affecting the Property.
12. **DOWN PAYMENT IN ESCROW.** The Earnest Money Deposit referred to on page one of this Contract shall be held in Seller's Broker's escrow account until Closing of title. Said account is maintained at Bank of America. If litigation is commenced by any party regarding any money held in escrow, Broker shall not disburse any escrow which is subject to dispute until provided for in a court order, judgment or stipulation between the parties.
13. **WILLFUL DEFAULT.** If Seller shall have performed or tendered performance of his or her obligations under this Contract and Purchaser shall have willfully defaulted hereunder, then, Seller, at his or her option, may: (a) Retain the down payment as liquidated and agreed upon damages, or (b) Pursue other legal remedies. This option of liquidated and agreed upon damages is not a penalty, the Purchaser understands that the Seller has bound (her)himself to the sale of the Property to the Purchaser and has removed the Property from sale at a time when other parties would have been interested in acquiring the Property. Seller, therefore, will have sustained substantial damages which are not capable of determination with precision if the Purchaser willfully defaults.
14. **ATTORNEY APPROVAL.** This Contract is contingent upon Purchaser and Seller obtaining approval of this Contract by their respective attorneys as to all matters contained herein without limitation. This contingency shall be deemed waived unless Purchaser's or Seller's attorney on behalf of their client notifies the other party or that party's attorney in writing by facsimile, email or certified mail of their disapproval of this Contract, no later than three (3) business days after this Contract has been signed by both Seller and Purchaser. If Purchaser's or Seller's attorney provides such notification, then this Contract shall be deemed cancelled, null and void.
15. **NO ASSIGNMENT OR RECORDING.** Purchaser may not assign or record all or any part of this Contract without the express prior written consent of Seller. Despite the foregoing, Purchaser may assign this Contract to any entity wholly owned, directly or indirectly, by Purchaser, provided, however, that, in such event, the undersigned Purchaser shall remain liable for the obligations of Purchaser under this Contract.
16. **GOVERNING LAW AND VENUE.** This Contract shall be interpreted, construed, applied and enforced in accordance with the laws of the State of _____. The County of _____ State of _____ shall be the forum for any legal controversy between the Parties rising in connection with this Contract, which courts shall be the exclusive forums for all such suits, actions or proceedings.
17. **SEVERABILITY.** If any portion of this Contract is judicially determined to be invalid or unenforceable, such portion shall be deemed severable from this Contract and the invalidity or unenforceability of such portion shall not affect the

Purchaser's Initials: _____ Seller's Initials: _____

validity and enforceability of the remainder of this Contract, which shall remain in full force and effect and be construed to fulfill the intention of the Parties hereto.

18. **COUNTERPARTS, ELECTRONIC SIGNATURES, AND COMPLETE CONTRACT.** This Contract and any addenda hereto or other document necessary for the Closing of the transactions contemplated hereby may be signed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one document. Facsimile and electronic signatures shall have the same legal effect as original signatures. This Contract and any addenda hereto or other document necessary for the Closing of the transactions contemplated by this Contract may be accepted, signed or agreed to through the use of an electronic signature in accordance with the Electronic Signatures in Global and National Commerce Act (E-Sign Act), Title 15, United States Code, Sections 7001 *et. seq.*, the Uniform Electronic Transaction Act (UETA) and any applicable state law. This Contract constitutes the entire Contract of the parties hereto with respect to the subject matter of this Contract and supersedes any other instruments purporting to be a Contract of the parties hereto relating to such subject matter.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE SIGNED THEIR NAMES AS OF THE DAY AND YEAR STATED BELOW.

_____	_____	_____	_____
Seller	Date	Purchaser	Date
_____	_____	_____	_____
Seller	Date	Purchaser	Date

Purchaser’s Initials: _____ Seller’s Initials: _____